son in the sixtieth congress. The bill will be reintroduced at the coming regular session. It aims to promote educational interests throughout the United States by adding a secretary of education to the cabinet whose duty it would be to "collect, classify, and disseminate information and advice on all phases of education and to promote, foster, and develop advancement and improvement in the common school system throughout the United States."

The bill also provides for an assistant secretary of education and for such clerical assistants as may from time to time be authorized by congress. Further provision is made for transferring the work of the bureau of education from the department of the interior to the proposed department of education.

Electoral Reforms—Sweden. In February, 1909, both chambers of the riksdag voted by large majorities to establish the system of proportional representation, and to grant universal suffrage to all inhabitants of the country over twenty-four years of age.

The Eight Hour Day on Public Work in New York. The New York labor law, passed in 1897 and 1899, declared unconstitutional, and reënacted, after constitutional amendment, in 1906 (c. 506), has been upheld by the New York court of appeals in the recent case of People vs. Metz (October 13, 1908), 85 N. E. 1070, in so far as it relates to public works.

In view of the well-known case of Atkin vs. Kansas (1903), 191 U. S. 207, wherein it was decided that ". . . . it belongs to the State to prescribe the conditions upon which it will permit public work to be done in its behalf," and, ". . . . it cannot be deemed a part of the liberty of any contractor that he be allowed to do public work in any mode he may choose without regard to the wishes of the State." It may seem odd that this portion in the New York statute has been brought into question, but the New York cases differ from those of most of the other States since the element of the State Constitution has figured in them, whereas in most of the others the protection of the Federal Constitution alone has been invoked.

Before the decision in Atkin vs. Kansas, statutes making the eight hour day binding on employers representing the State and on contractors doing work for the state or its representatives, had been held unconstitutional in, ex parte Kuback (1890), 85 Cal. 274, State vs. McNally (1896), 48 La. Ann. 1450, Seattle vs. Smyth (1900), 22 Wash. 327

Cleveland vs. Clement (1902), 67 Ohio 197. They had been held constitutional in *in re* Ashby (1898), 60 Kas. 101, *in re* Dalton (1899), 61 Kas. 257, and State vs. Atkin (1902), 64 Kas. 174. Since the case of Atkin vs. Kansas similar laws have been upheld in *in re* Broad (1904), 36 Wash. 449, Keefe vs. People (1906), 37 Colo., 317, Penn Bridge Co. vs. U. S. (1907), 29 App. Cas. D. C. 452, and People vs. Metz (1908), 85 N. E. (New York) 1070.

A study of the eight hour legislation of New York alone would furnish material of no ordinary character for an essay on "the evolution of a law." Not only has the present law traveled a long road, but it and its predecessors have had to run the gauntlet of the courts rather oftener than has been the case with similar laws in other States. Even now its safety is assured only as to the hours of labor and the rate of wages on public works, while the right of the legislature to prescribe concerning these would no longer in most States have been questioned.

In 1867 the New York legislature passed a law (c. 856) making eight hours "a legal day's work in all cases of labor as service by the day where there is no contract to the contrary." In 1870 an amendment (c. 385) imposed a penalty for violation of this law by public officers or contractors for public works, but permitted work for longer hours for extra compensation. This law was strengthened in 1894 by a provision (c. 622) which forbade the employment of others than citizens of the United States on public works and required that persons entering into contract with a city must stipulate to pay their workmen "the prevailing rate of wages" in the locality.

In the codification of 1897 the eight hour law was inserted as sec. 3 of ch. 415. In 1899 (c. 567) overtime was prohibited on public work and eight hours was made a maximum, to be exceeded only in cases of extraordinary emergency.[1] Slight details were added in 1900 (c. 298).

In 1901 the law was attacked in the case of People *ex rel* Rodgers vs. Coler, 166 N. Y. 1, wherein it was held that the requirement concerning payment of the "prevailing rate of wages" unlawfully deprived the contractor of his contract and property rights and unlawfully restricted the municipality in its right to contract. The eight hour clause was attacked in the case of Cossey vs. Grout (1904), 179 N. Y. 417. Here the court said that Atkin vs. Kansas had decided that the regulation of such a contract lies with the State and that such a statute does not violate the constitutional rights of the contractor; but as to the other question

[1] For a recent judicial definition of emergency, see Penn. Bridge Co. vs. United States, 29 App. Cas. D. C. 452.

the rights of the municipality, these are guaranteed by the State constitution. Five of the seven judges agreed that the provision in question violated the New York constitution.

To remedy these various difficulties an amendment to the New York constitution was proposed. Sec. 1 of art. 12 of the constitution read: "It shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, etc. . . . . so as to prevent abuses in assessment and in contracting debt by such municipal corporations. The amendment to this article proposed by the senate and assembly by concurrent resolution (1902–3), was passed by the people by 338,570 to 133,606 votes in 1905, and went into effect January 1, 1906. This amendment reads as follows: "and the legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare, and safety of persons employed by the state or by any county, city, town, village or other civil division of the state, or by any contractor or sub-contractor performing work, labor or services for the State or for any county, city, town, village or other civil division thereof."

In 1906 the legislature reënacted the statutes of 1897 and 1899. This law (1906, c. 506) makes eight hours a legal day's work for all employees except those engaged in farm labor or domestic service, but permits an agreement for overtime at increased compensation, except for work done by or for municipal corporations by contractors therewith, and requires specifications for an eight hour day, except in cases of emergency caused by fire, flood or danger to life or property, in contracts with the latter. It exempts also persons employed in State institutions, engineers, elevator men, etc., in public buildings during the legislative session, and laborers engaged in the construction and repair of highways outside the limits of cities.

This was the law which was brought into question in the case of People vs. Metz. The case involved payment for the work done by a contractor with a municipality, who had violated the eight hour provision as regarded his employees. The court upheld the law, but declined to consider it any further than as it bore upon the question of public work. Prior to the amendment, the State could not thus restrict the rights of the municipality in making contracts. The amendment was undoubtedly framed with a definite purpose. It must mean that the people were giving the legislature a power which it had not previously possessed. This power covers the right to make such legislation as the statute in question. In answer to the charge that the exemption of cer-

tain classes of labor rendered the law invalid as class legislation, the court replied: First, as regards the exception of persons employed in state institutions, "we do not regard this classification as arbitrary or capricious within the rule governing the subject, for it has some reason to support it, and hence was within the power of the legislature. Employees with duties to be discharged by night time or partly by day and partly by night. . . . and those who operate the machinery for lighting and heating the State capitol when the State legislature is in session, may properly receive separate classification in order to prevent public injury and inconvenience. Here also, the State was dealing with its own agencies and had the right to promote its convenience and welfare by making a distinction between those who perform manual labor for the most part and those who work largely with their brains. The one class of duties involves greater bodily fatigue than the other . . . ." Second, concerning the exemption of those employed in working upon highways outside the limits of cities and villages: "This is in conformity with the custom in rural districts, where it may be argued the crops could neither be planted nor harvested by laboring eight hours a day. The reason for the distinction may not be conclusive, but it will support an argument, which is sufficient. . . . The law requires equality only among those similarly situated and this rule we think was observed in the statute in question." Finally ". . . . in the legislation in question the State was dealing with its own creations and could discriminate as it saw fit."

In view of this decision we may regard the eight hour day for labor on public work in New York as definitely established. This adds New York to a list which already includes California, Colorado, Kansas, Massachusetts, Montana, Oklahoma, Oregon, the District of Columbia, Hawaii, and Panama.

STANLEY K. HORNBECK.

Income Tax—France. The graduated income tax bill was passed in the French chamber of deputies on March 9. The vote stood 407 to 166. The bill now goes to the senate, where it is expected to meet with considerable opposition.

The proposed tax is to take the place of present taxes on real estate, personal property, doors and windows, on stocks and bonds, and on commercial transfers. The rates are fixed at 4 per cent on incomes from real estale, stocks, bonds, and other forms of capital, except savings deposits; $3\frac{1}{2}$ per cent on incomes from commercial and industrial enter-